

# Ask Kidder.

## This Friday, June 9, the Fiduciary Regulation is finally here

### Are you prepared – and compliant?

The long-anticipated Fiduciary Regulation and its impact on plan sponsors and retirement industry service providers will finally become applicable on Friday, June 9, 2017. This follows a 60-day delay, requested by the White House, to allow the new administration and [Department of Labor \(DOL\)](#) additional time to review the effects of the new rule, which redefines "fiduciary" and prohibits conflicts of interest that affect qualified retirement plans and IRAs.

The DOL has confirmed that it will not seek further delay of the applicability date.

### What does this mean to plan sponsors and financial professionals?

As of June 9, persons providing investment advice to 401(k) and 403(b) plans and IRAs who receive direct or indirect compensation and fees will be considered fiduciaries. From now until January 1, 2018, when the rule is fully implemented, all affected parties are expected to move forward and document their efforts to comply.

During this transition period, the DOL will not pursue claims and the IRS will not impose excise taxes against fiduciaries, if they are working in good faith to comply with the regulation. In addition, the requirements of the "Best Interest Contract Exemption" (BICE), which is a prohibited transaction exemption that applies to securities brokers and insurance agents being paid variable compensation, will not be fully enforced. Brokers and agents must still comply with the Impartial Conduct Standard, until the full force of the regulation goes into effect on January 1.

As mentioned in [prior newsletters](#), Registered Investment Advisers usually serve in a fiduciary capacity, so the fiduciary rule has minimal or no effect on them.

### Will the regulation change prior to January 1, 2018?

Maybe. The DOL has inferred that the January 1, 2018 date may be delayed. The DOL is still reviewing the Fiduciary Rule and may request additional public input to determine whether the new regulation will adversely affect the ability for Americans to access financial advice and retirement information, particularly in the case of small IRAs.

### What should a plan sponsor do?

Compliance with the rule not only applies to investment professionals, but also to plan sponsors and those making plan fiduciary decisions. If you have not done so already, plan to comply. Most of the investment industry is ready for implementation regarding 401(k) and 403(b) plans. And it may be considered a breach of fiduciary duty if the plan sponsor/fiduciary employs a financial professional to assist with plan investments who is not serving in an investment fiduciary capacity.

### Will the new fiduciary regulation reduce lawsuits against plan sponsors?

Actually, the new fiduciary rule provides additional opportunities for the DOL and plan participants to use litigation to allege fiduciary breaches.

### What best practices should be implemented?

It's not sufficient to simply designate someone as an investment fiduciary. Compliant, [best practices](#) include:

- a designated fiduciary and investment committee;
- an approved investment policy;
- consistent and documented implementation of the investment policy; and
- minutes of regular committee meetings, demonstrating adherence to the investment policy.

Committee meetings also provide opportunities to review plan design, plan administration and participant education expectations.

If you would like additional information, please contact your financial professional, Kidder Pension Consultant or Primary Administrator at (800) 300-3086.

### Kidder again certified for fiduciary excellence

For the sixth consecutive year, Kidder Benefits Consultants has been certified for its adherence to the American Society of Pension Professionals & Actuaries (ASPPA) Standard of Practice for Retirement Plan Service Providers. Kidder was among the nation's first third-party administrators to complete the independent certification process conducted by the [Centre for Fiduciary Excellence \(CEFEX\)](#).

The ASPPA Standard describes how a service provider can help plan sponsors fulfill their fiduciary obligations. It includes best practices for governance, organization, human resources, operations, planning, systems and disclosure. Kidder's renewal certification is for its Third Party Administration and ERISA 3(16) Plan Level Fiduciary services.

Kidder is one of only a few firms, nationwide, to be certified to offer ERISA Section 3(16) plan-level, discretionary fiduciary services, which are designed to help retirement plan sponsors and administrators satisfy many of their fiduciary responsibilities.